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**PUBLIC DOCUMENT**

January 4, 2002

**FILED ELECTRONICALLY**

Ms. Gloria Blue  
Executive Secretary, Trade Policy Staff Committee  
Office of the United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

Re: Certain Steel – Comments on TPSC Evaluation of Options for Action  
Under Section 203 With Respect to Carbon Steel Butt-Weld Pipe Fittings

Dear Ms. Blue:

On behalf of Mills Iron Works, Inc. (“Mills”), Trinity Fitting Group, Inc. (“Trinity”), and Tube Forgings of America, Inc. (“TFA”), U.S. producers of carbon steel butt-weld pipe fittings, and pursuant to the Trade Policy Staff Committee’s (“TPSC”) notice requesting comments,<sup>1</sup> and November 29, 2001 and December 28, 2001 notices amending its filing requirements and deadlines,<sup>2</sup> enclosed please find these firms’ written comments on the actions the President should take under section 203 of the Trade Act in

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<sup>1</sup> *Trade Policy Staff Committee; Public Comments on Potential Action Under Section 203 of the Trade Act of 1974 With Regard to Imports of Certain Steel*, 66 Fed. Reg. 54321 (October 26, 2001). One of the steel products covered by the Trade Policy Staff Committee’s *Federal Register* notice is carbon and alloy flanges, fittings, and tool joints (steel product 6), which encompasses carbon steel butt-weld pipe fittings.

<sup>2</sup> *Trade Policy Staff Committee: Extension of Deadline for the Submission of Responses to Requests for the Exclusion of Specific Products From Any Action Under Section 203 of the Trade Act of 1974 With Regard to Imports of Certain Steel and Modifications to the Earlier Instructions for the Submission of Written Comments*, 66 Fed. Reg. 59599 (November 29, 2001) and *Trade Policy Staff Committee: Extension of Deadline for the Submission of Written Comments on What Action, If Any, the President Should Take Under Section 203 of the Trade Act of 1974 With Regard to Imports of Certain Steel and Responses to Such Comments*, 66 Fed. Reg. 67349 (December 28, 2001).

response to the U.S. International Trade Commission's affirmative determination of serious injury to the domestic industry producing carbon steel butt-weld pipe fittings.<sup>3</sup>

Please feel free to contact the undersigned should you have any questions.

Respectfully submitted,

/s/ Cheryl Ellsworth

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Cheryl Ellsworth  
John B. Totaro, Jr.

Counsel for Mills Iron Works, Inc.,  
Trinity Fitting Group, Inc., and  
Tube Forgings of America, Inc.

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<sup>3</sup> Carbon steel butt-weld pipe fittings (classified within HTSUS subheadings 7307.93.3000 and 7307.93.9030) were included within the Commission's Product Group 22, carbon steel fittings, flanges, and tool joints.

**BEFORE THE  
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE  
TRADE POLICY STAFF COMMITTEE**

**PUBLIC DOCUMENT**

**COMMENTS ON TPSC EVALUATION OF OPTIONS  
FOR ACTION UNDER SECTION 203  
WITH RESPECT TO CARBON STEEL BUTT-WELD PIPE FITTINGS**

**FILED ON BEHALF OF  
MILLS IRON WORKS, INC.,  
TRINITY FITTING GROUP, INC., AND  
TUBE FORGINGS OF AMERICA, INC.**

**STEEL PRODUCT 6:  
CARBON AND ALLOY STEEL  
FLANGES, FITTINGS, AND TOOL JOINTS**

January 4, 2002

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## EXECUTIVE SUMMARY

The U.S. International Trade Commission (“Commission”) reached a unanimous determination that imports of carbon steel flanges, fittings, and tool joints caused serious injury to the domestic industry. One product within that category is carbon steel butt-weld pipe fittings (“BWPF”). Based on the injury data for the product category, and the data demonstrating increased imports of BWPF and severe underselling by imports of BWPF, the Trade Policy Staff Committee should recommend that the President implement remedies that address BWPF specifically. The domestic BWPF producers propose a remedy that combines a quota to address soaring BWPF import volumes (beginning at an average of 1993-1995 volumes) and a tariff increase to address the documented levels of underselling by imported BWPF (beginning at 37 percent).

Because these remedies are tailored to address BWPF imports, they will be effective in facilitating the domestic BWPF industry’s positive adjustment to import competition. In contrast, the remedy measures recommended by the Commission would not provide effective relief for domestic BWPF producers. The Commission’s recommendations are intended to apply to a broad scope of products including, but not limited to, BWPF. A damaging consequence of such broad, non-product specific remedies is that they would permit continued increases in BWPF import volumes, continued underselling by imported BWPF, and thus continued serious injury to domestic BWPF producers. The Commission’s recommended remedies would not provide an opportunity for domestic BWPF producers to regain the market share and profitability lost due to imports, and thus would not provide an opportunity for these producers to adjust to import competition.

I. Introductory Statement

Effective June 22, 2001, following receipt of a request from the United States Trade Representative (“USTR”), the International Trade Commission (“Commission”) instituted investigation No. TA-201-73 under section 202 of the Trade Act of 1974 (19 U.S.C. §2252) concerning certain steel products.<sup>1</sup> On October 22, 2001, the International Trade Commission (“Commission”) made a unanimous affirmative determination that imports of carbon steel fittings, flanges, and tool joints (“fittings”) are a substantial cause of serious injury to the domestic industry producing those articles.<sup>2</sup> On October 26, 2001, the USTR’s Trade Policy Staff Committee (“TPSC”) published a notice requesting comments on issues related to the recommendation that the interagency group makes as to what action the President should take under 19 U.S.C. §2253(a) to facilitate efforts by the domestic industries producing certain steel products to make a positive adjustment to import competition and provide greater economic benefits than costs.<sup>3</sup> One of the steel

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<sup>1</sup> *Steel: Institution and scheduling of an investigation under section 202 of the Trade Act of 1974 (19 U.S.C. 2252)*, 66 Fed. Reg. 35267 (July 3, 2001). On July 26, 2001, the Commission received a resolution adopted by the Committee on Finance of the United States Senate that requested that the Commission undertake an investigation under Section 202 of the Trade Act of 1974 with respect to an identical list of steel products. The Commission consolidated the investigation requested by the Committee on Finance with investigation No. TA-201-73, instituted at the request of the USTR. *Consolidation of Senate Finance Committee Resolution requesting a section 201 investigation with the investigation requested by the United States Trade Representative on June 22, 2001*, 66 Fed. Reg. 44158 (August 22, 2001).

<sup>2</sup> The Commission defined this product grouping, *i.e.*, Product Group 22, as follows: “{c}arbon and alloy fittings and flanges (“fittings”) are generally used for connecting the bores of two or more pipes or tubes together, or for connecting a pipe or tube to some other apparatus, or for closing the tube aperture. This category also includes tool joints for welding onto lengths of unfinished drill pipe to produce finished drill pipe.” *See* Staff Report to the Commission on Investigation No. TA-201-73 (October 12, 2001) (“Final Staff Report”) at TUBULAR-4.

<sup>3</sup> *Trade Policy Staff Committee; Public Comments on Potential Action Under Section 203 of the Trade Act of 1974 With Regard to Imports of Certain Steel*, 66 Fed. Reg. 54321 (October 26, 2001) (“TPSC Comments Notice”).

products identified in the TPSC's *Federal Register* notice was carbon and alloy flanges, fittings, and tool joints, identified as steel product 6.

These comments are filed on behalf of Mills Iron Works, Inc. ("Mills"), Trinity Fitting Group, Inc. ("Trinity"), and Tube Forgings of America, Inc. ("TFA"), firms that manufacture carbon steel butt-weld pipe fittings ("BWPF"), an article within the carbon and alloy flanges, fittings, and tool joints product grouping.<sup>4</sup> Particularly in light of the Commission's December 7, 2001 announcement of remedy recommendations and December 19, 2001 views on remedy, Mills, Trinity, and TFA welcome this opportunity to comment on the actions the President should take under 19 U.S.C. §2253(a). In summary, these domestic producers submit that the Commission's recommended tariff increases (beginning at either 30 or 13 percent) would be insufficient to facilitate efforts by the domestic BWPF industry to make a positive adjustment to import competition.<sup>5</sup> To fulfill his statutory responsibility with respect to this industry, the President must impose on imports of BWPF an additional tariff of at least 37 percent combined with product- and country-specific quotas set at pre-injury volumes.

## II. Imports, Not Other Factors, Caused the Serious Injury to the Fittings Industry

An affirmative determination in a Section 201 investigation requires a finding by the Commission that increased imports were a "substantial cause" of serious injury to a domestic industry, that is, a cause which is important and not less than any other cause.<sup>6</sup>

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<sup>4</sup> BWPF includes finished and unfinished carbon steel BWPF, both those having an inside diameter not exceeding 360 millimeters classified in HTSUS subheading 7307.93.3000 ("small diameter"), and those with an inside diameter larger than 360 millimeters classified in HTSUS subheading 7307.93.9030 ("large diameter"). Products classified under subheadings 7307.93.3000 and 7307.93.9030 were included within the Commission's determination of serious injury. See Final Staff Report at TUBULAR-4.

<sup>5</sup> See 19 U.S.C. §2253(a).

<sup>6</sup> 19 U.S.C. §2252(b)(1)(A) and (B).

With respect to the fittings product grouping, and pursuant to 19 U.S.C. §2252(c)(2)(B), the Commission examined a range of factors other than imports that might have been a cause of serious injury, and included this analysis in its report to the President. The Commission's report makes clear that imports, above all other factors, caused the serious injury to domestic fittings producers:

[i]n sum, the steady and large increase in imports, which captured an increasing share of the U.S. market, led to erosions in such industry indicators as production, capacity utilization, shipments, and employment indicators.”<sup>7</sup>

In reaching this conclusion, the Commission found that the record did not support the numerous allegations put forth by respondents regarding the contribution to injury of factors other than imports. Specifically, the Commission found that: (1) the injury data can be correlated to import volumes; (2) approved manufacturer lists do not insulate segments of the fittings market from import competition; (3) the financial performance of domestic fittings producers is not related to the import cycle in the oil and gas industry; (4) domestic capacity expansion and intra-industry price competition did not lead to injury; (5) decreasing profit levels are not the result of inefficient or outdated domestic production facilities; (6) decreasing profit levels are not the result of the inability of producers to obtain sufficient quantities of forgings used in domestic production; (7) the fittings industry did not suffer from a shortage of qualified workers; and (8) any degree of purchaser consolidation “would not explain the reduction in domestic production,

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<sup>7</sup> *Steel*, USITC Pub. 3479 (December 2001), Volume 1: Determination and Views of Commissioners (“Steel Determination”) at 177 (emphasis added).



shipments, employment, and other non-price indicators that occurred during the period examined.”<sup>8</sup>

The undiluted causal relationship between increased imports and injury that formed the basis of Commission’s unanimous serious injury determination with respect to fittings provides an informative backdrop to the remedy measures proposed in these comments. In evaluating the remedy measures designed by Mills, Trinity, and TFA – on their own merits and in comparison to the remedies recommended by the Commission – the TPSC must keep in mind that imports of BWPF, not other factors, caused the serious injury experienced by BWPF producers. The remedies proposed herein will enable the domestic industry to adjust to import competition because they directly address the injurious volumes and prices of imported BWPF.

### III. Proposal Regarding Remedy Measures and Implementation Guidelines

The program of remedy measures recommended by Mills, Trinity, and TFA meets the various statutory parameters regarding the type and duration of such measures, and is based on facts on the record of this investigation. It is a program tailored to the domestic BWPF industry, because it is based on record evidence of the volumes and prices of imported BWPF, as well as data on the larger fittings product grouping, which together demonstrate the extent of the serious injury caused by imports of BWPF. As a result, “the cumulative effect of such action does not exceed the amount necessary” to remedy the serious injury experienced by domestic BWPF producers.<sup>9</sup>

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<sup>8</sup> *Id.* at 177-178 (emphasis added).

<sup>9</sup> 19 U.S.C. §2253(e)(2).

Most importantly, and unlike the Commission's remedy recommendations, the remedy measures proposed by Mills, Trinity, and TFA address imports of BWPF, specifically, rather than all imports within the "flanges, fittings, and tool joints" product grouping, and should apply to all imports of BWPF, including those from Mexico and Canada.<sup>10</sup> These measures consist of a combination of quantitative restrictions and increased duties on imported BWPF in order to effectively address the struggles of domestic fittings producers to cope with increasing quantities of low-priced imports. To provide effective relief, the combination of quantitative restrictions and increased duties must remain in effect for four years to address the cumulative nature of the injury suffered by the domestic industry.<sup>11</sup>

A. A Quantitative Restriction on BWPF Set at 1993-1995 Average Volume of Imports

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- The quantitative restriction should set separate limits for small diameter BWPF (7307.93.3000, HTSUS) and for large diameter BWPF (7307.93.9030, HTSUS) to prevent a shift in imports between the two classifications.

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<sup>10</sup> Exhibit 1 to these comments contains import statistics for BWPF. This exhibit also compares the volume of BWPF imported during the Commission's period of investigation to the volume of all products within Product Group 22 (flanges, fittings, and tool joints). These data demonstrate that BWPF represent a substantial proportion of the larger product group (between 24 and 31 percent). On this basis, we submit that (1) the import and industry data collected by the Commission with respect to Product Group 22 are relevant to BWPF, and (2) the TPSC should address remedy recommendations directly to BWPF: a high-volume and easily segregable subgroup within the Commission's larger product group for which significant data exists on the record of this investigation.

<sup>11</sup> Under 19 U.S.C. §2252(e)(1)(A) the initial effective period of the remedy imposed by the President shall not exceed four years.

- The quantitative restriction should also set separate quantity caps for the 6 largest suppliers of small and large diameter BWPF during the January to June 2001 period.<sup>12</sup>
- To avoid market disruption during the period of relief, these quantitative restrictions should be maintained on a quarterly basis.
- The first year annual quantitative restriction for small diameter BWPF should be reduced by the quantity by which full-year 2001 imports of both small-diameter and large-diameter BWPF, as well as imports through the time the President implements relief, exceed imports of those products in 2000.
- The basis of the annual total quantitative restriction should be the average of the import volumes for the three years 1993-1995, for small and large diameter BWPF. An alternate, but less effective quantitative restriction could be based on the period 1995-1997.
- The quantitative restrictions should be phased down over the 4 years they would be in effect by increasing the volume caps by two percent per year, consistent with the rate of growth in demand from 1996-2000.<sup>13</sup>

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<sup>12</sup> The country-specific caps would be based on the traditional trade patterns of both BWPF products. Specifically, the caps would be percentages of the annual total quantitative restriction calculated as the weighted average percentage of each country's combined volume of imports for 1999, 2000, and January to June 2001, compared to the total of all imports for that period. *See* Exhibit 2. The remaining volume (14 and 15 percent of total imports, respectively, for the two BWPF classifications) would be available for imports from all other countries. Volume caps that apportioned imports subject to a fixed quantitative restriction based on the traditional trade patterns for both small and large diameter BWPF would be consistent with the findings of the World Trade Organization dispute settlement panel in *United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea*, WT/DS202/R (October 29, 2001).

<sup>13</sup> Final Staff Report at TUBULAR-53, Table TUBULAR-45.

B. A Tariff Increase of 37 Percent

- The remedy measures should also incorporate an increase of at least 37 percent ad valorem to the duties for both small and large diameter BWPF, from all NAFTA and non-NAFTA countries, based on the actual margins of underselling observed by the Commission during this investigation.<sup>14</sup>
- The duty increases should be imposed for four years, phased down in the second, third and fourth years by no more than 15 percent each year.

IV. The Appropriate Base Period for the Quantitative Restriction

A. 1993-1995 Imports Are the Most Recent Representative Period of Imports

The statute requires that a quantitative restriction permit the importation of a quantity or value of the article which is not less than the average level of imports in the most recent 3 years that are representative of imports of the article.<sup>15</sup> Therefore, the quota component of our remedy recommendation should be based on an average of the import volumes in the years 1993 through 1995.<sup>16</sup> These are the most recent three years prior to the injury period (1996 through the present) that are representative of imports of BWPF. As demonstrated by the import tables in Exhibit 1 to these comments, imports

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<sup>14</sup> This tariff increase is below the maximum tariff increase of 50 percent established in 19 U.S.C. §2253(e)(2).

<sup>15</sup> 19 U.S.C. §2253(e)(4). In the statement accompanying the remedy recommendations he announced on December 7, 2001, Commissioner Devaney acknowledged that the phrase “in the most recent 3 years that are representative of imports of the article” does not mean simply the three most recent years examined by the Commission during the investigation. *Statement of Commissioner Dennis M. Devaney on Remedy Recommendations in Steel TA-201-73* (December 7, 2001) (available on the Commission’s web site at [www.usitc.gov](http://www.usitc.gov)). In the instant investigation, the Commission examined data for the full years 1996 through 2000. However, as a component of his remedy recommendations with respect to stainless steel products, Commissioner Devaney incorporated a quota in the amount equal to the average quantity of imports during the period 1996 through 1998, which he found to be the most representative period.

<sup>16</sup> Exhibit 3 provides a calculation of the quantitative restriction for each of the four years of the relief period.

were at a relatively constant level between 1992 and 1995 for both small and large diameter BWPF. However, between 1995 and 1996, imports of small diameter BWPF rose by 61 percent, and imports of large diameter BWPF rose by 112 percent. And while 1996 import volumes were aberrationally high for both BWPF and the entire fittings product grouping, annual imports of BWPF have remained at least 46 and 66 percent higher (and have reached 87 and 188 percent higher) than the 1995 volume for small and large diameter BWPF, respectively, in each subsequent year.

Our position regarding this base period reflects the unique circumstances confronting the domestic BWPF industry. To permit imports to persist at anywhere near the status quo would prove devastating to domestic BWPF producers. As demonstrated by the data that the Commission collected with respect to the fittings product grouping, imports increased by 30.8 percent between 1996 and 2000, and increases in recent years have been particularly marked: imports rose by 15.6 percent between 1998 and 2000, and by 32.1 percent comparing the first half of 2000 with the first half of 2001.<sup>17</sup> As import volumes soared, so did the market share of imports, increasing from 35.5 percent in 1998 to 41.7 percent in 2000, and from 39.0 percent in the first half of 2000 to 46.7 percent in the first half of 2001.<sup>18</sup> The effect of these imports is reflected, in part, in the operating profits of domestic fittings producers, which decreased steadily from 8.9 percent in 1996 to a loss in 2000, with 7 of 17 producers reporting operating losses in the first half of

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<sup>17</sup> Final Staff Report at TUBULAR-15, Table TUBULAR-8.

<sup>18</sup> *Id.*

2001.<sup>19</sup> To be effective, remedy measures must reverse these trends, not maintain them or allow them to intensify.

Only a quantitative restriction which begins to restrict imports at pre-surge volumes would have any measurable impact on the domestic industry over the effective period of relief.<sup>20</sup> Because, as we stated *supra*, the import surge with respect to small and large diameter BWPF clearly began in 1996, basing a quota on import levels after 1995 would be setting the quota in mid-surge. Permitting imports to enter the United States at levels at or not significantly below those that were the basis of the Commission's affirmative determination of serious injury, and then allowing increases through a phase-down period, would provide no relief to the domestic industry.

The surge of imported fittings and the injury experienced by fittings producers did not occur only late in the period of investigation, but began in 1996 and gained in cumulative intensity throughout the five and one-half years examined by the Commission. For example, more domestic market share was overtaken by imports in every year beginning in 1997, and continuing into interim 2001.<sup>21</sup> To make matters worse, as profits evaporated, domestic fittings producers shelved plans for the very capital investments that would have helped them compete with increasing import competition: capital investment for fittings producers declined 41 percent between 1996 and 2000.<sup>22</sup>

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<sup>19</sup> *Id.* at TUBULAR-29, Table TUBULAR-20.

<sup>20</sup> As the Commission has observed with respect to the fittings product grouping, the BWPF industry has ample unused capacity, and would be able to make up any supply shortfalls caused by a quantitative restriction on imports of BWPF. Final Staff Report at TUBULAR-22, Table TUBULAR-14.

<sup>21</sup> Final Staff Report. at TUBULAR-53, Table TUBULAR-45.

<sup>22</sup> *Id.*

Our proposed quantitative restriction based on the average of 1993-1995 BWPF imports would cause imports to fall below the level in 1996, the year in which imports surged and profitability and other indicators of domestic industry performance began their steady decline into loss. Thus, a quota on BWPF imports set at the 1993-1995 average would directly offset the very surge that caused the serious injury.<sup>23</sup> A quota set at this level would temporarily place domestic BWPF producers in the position they would have been in absent the surge.

B. 1995-1997 Imports Are More Recent But Less Representative

An alternative base period for the quantitative restriction component of our remedy recommendation could be the average of imports during the three years 1995-1997.<sup>24</sup> However, for both small-diameter and large-diameter BWPF, this alternative period incorporates both the aberrationally high 1996 volumes (61 and 112 percent higher than 1995 volumes for small and large diameter BWPF, respectively), and the substantial volumes in 1997 (49 and 66 percent higher than 1995 volumes for small and large diameter BWPF, respectively).<sup>25</sup> The import volumes for both BWPF classifications did not decline significantly throughout the Commission's period of investigation, and in fact experienced significant increases.<sup>26</sup>

Imports of small diameter BWPF remained at approximately 18,000 tons between 1997 and 1999, then spiked by 28 percent in 2000 to approximately 23,000 tons. 2001 imports of small diameter BWPF look to be even higher, as imports in January to June

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<sup>23</sup> See Steel Determination at 177-178.

<sup>24</sup> See Exhibit 4.

<sup>25</sup> See Exhibit 1.

<sup>26</sup> *Id.*

2001 were 80 percent higher than in the same period of 2000.<sup>27</sup> Similarly, the volumes of large diameter BWPF never fell below 66 percent higher than 1995 levels between 1996 and 2000, and were higher in January to June 2001 than in the same period of 2000. Thus, from the perspective of BWPF producers, a quantitative restriction based on 1995-1997 imports would create a ceiling on imports too similar to present conditions, and would not provide the relief the domestic industry needs to implement its adjustment plans.

V. The Appropriate Level of Additional Tariff is 37 Percent

We urge the TPSC to recommend, in addition to a quantitative restriction, that the President implement an additional tariff of 37 percent on all imports of BWPF, including those from Mexico and Canada, which will offset the damaging price effects of all BWPF imports. The level of this tariff increase reflects actual margins of underselling for a representative BWPF product, and we submit that an increase to this level will provide effective and necessary price relief to domestic BWPF producers. A tariff increase of this magnitude will also help to reduce the risk of duty absorption posed by the fact that many U.S. importers are affiliated with non-NAFTA foreign producers/exporters. As with our proposed quantitative restriction, the tariff increase we recommend is tailored to address the specific circumstances faced by BWPF producers.

In the instant investigation, the Commission collected quarterly sales and quantity data for U.S. producers' and importers' sales from January 1996 to June 2001 for one product within the "flanges, fittings, and tool joints" product grouping (Product Group 22). That product was a carbon steel butt-weld pipe fitting: 6 inch nominal diameter, 90 degree elbow, long radius, standard weight, meeting ASTM A-234, grade WPB or

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<sup>27</sup> *Id.*



equivalent specification.<sup>28</sup> The Commission found underselling by imports of this small-diameter BWPF in 100 percent of the pricing comparisons it recorded during the period of investigation.<sup>29</sup> These data also demonstrate that at no point during the period of investigation did the imported BWPF undersell the domestic product by less than 7.3 percent, and that margins of underselling reached levels of 36.5 percent.<sup>30</sup> Imports of BWPF from Mexico accounted for the highest of these margins, and the Commission recognized in its analysis of pricing data for this representative BWPF product that “[t]he weighted average prices of Mexican fittings collapsed in 2000 and interim 2001” and that during this period “margins of underselling more than doubled.”<sup>31</sup>

Moreover, imports from non-NAFTA countries undersold U.S. BWPF by margins ranging up to 25.8 percent.<sup>32</sup> The Commission noted with respect to these BWPF imports that

the margin of underselling was at its highest level in 2000 and January-June 2001. Non-NAFTA imports have been priced at more than 20 percent below the domestic product since the fourth quarter of 1999.<sup>33</sup>

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<sup>28</sup> Final Staff Report at TUBULAR-75. With respect to the larger Tubular Products product category, the Commission stated that some of the products for which it collected pricing data represented low volumes compared to the entire product grouping, but concluded that “low volumes do not mean that the products in question are not representative of the larger category as a whole.” *Id.* However, with respect to the BWPF it had selected from Product Group 22, the Commission stated that “[p]ricing product 22 is a high-volume butt-weld pipe fittings.” *Id.* at TUBULAR-77 (emphasis added). Beyond the mere fact that the Commission selected this BWPF over all other “flanges, fittings, and tool joints,” the Commission’s statement regarding relative volume provides further evidence that this product is representative of the larger “fittings” product grouping.

<sup>29</sup> Final Staff Report at TUBULAR-86, Table TUBULAR-67.

<sup>30</sup> *Id.*

<sup>31</sup> Steel Determination at 180.

<sup>32</sup> Final Staff Report at TUBULAR-86, Table TUBULAR-67.

<sup>33</sup> Steel Determination at 176.

The pricing data collected by the Commission demonstrate a damaging trend:

U.S. prices were generally stable during 1996-June 2001, but non-NAFTA prices showed a pattern of steady decline with a rise in volumes. Mexican prices also showed a decline, but on lower volumes.<sup>34</sup>

The price-based crisis faced by domestic BWPF producers is severe, and must be addressed with a tariff increase that reflects the high levels of underselling documented by the Commission. Without substantial tariff relief, the snowballing volumes of imports at “steadily declining” prices will likely continue to suppress or depress domestic prices, preventing U.S. producers from regaining reasonable profit levels.

If domestic producers were not hamstrung by price pressure from imports, they would have taken action to prevent the serious decline in their profitability. While profits for some producers rose incrementally in January-June 2001 (a period in which 7 out of 17 producers continued to experience operating losses),<sup>35</sup> the industry lost a further, substantial amount of market share to low-priced imports during this period.<sup>36</sup> These data demonstrate the depressing effect of increasing volumes of low-priced fittings, and illustrate the need for an additional tariff set at a level that will permit domestic producers to increase sales volumes and raise prices.

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<sup>34</sup> Final Staff Report at TUBULAR-77 (emphasis added).

<sup>35</sup> *Id.* at TUBULAR-84, Table TUBULAR-61 and TUBULAR-29, Table TUBULAR-20.

<sup>36</sup> U.S. producers’ market share fell from 61.0 percent in January-June 2000 to 53.3 percent in January-June 2001. *Id.* at TUBULAR-53, Table TUBULAR-45.

VI. Imposition of Both a Quota and an Additional Tariff Is Authorized Under the Law, and Will Provide Effective Relief

Under 19 U.S.C. §2253(a)(3), the President is authorized to recommend certain actions to facilitate the domestic industry's positive adjustment to import competition.

Under this subsection, the President may:

- (A) proclaim an increase in, or the imposition of, any duty on the imported article;
- (B) proclaim a tariff-rate quota on the article;
- (C) proclaim a modification or imposition of any quantitative restriction on the importation of the article into the United States;
- (D) implement one or more appropriate adjustment measures, including the provision of trade adjustment under part 2 of this subchapter;
- ...
- (J) take any combination of actions listed in subparagraphs (A) through (I).<sup>37</sup>

Thus, 19 U.S.C. §2252(a)(3)(J) provides the President with the specific authority to implement the program of remedy measures proposed by Mills, Trinity, and TFA. As discussed *supra*, we recommend a combination of two actions: an increase in the duty on imported BWPF under subparagraph (A), and the imposition of a quantitative restriction on the importation of BWPF into the United States under subparagraph (C).

As discussed in the preceding sections of these comments, our recommended program of actions would facilitate the domestic industry's positive adjustment to import competition by addressing the injurious aspects of these imports. Specifically, the quantitative restriction element would restrict imports to pre-surge levels, and to levels at which the domestic industry was able to earn reasonable profits. The additional tariff will address the severe margins of underselling by imported BWPF. We submit that these actions would restrict import volumes and prices only to the degree necessary to permit the domestic industry to implement the planned adjustments described in our

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<sup>37</sup> 19 U.S.C. §2253(a)(3).

November 5, 2001 filing to the TPSC, which we discuss further in Section IX, *infra*. We submit that this combination of measures will be effective because it is targeted to imported BWPF, based on the damaging high volumes and low prices of imported BWPF, and tailored to the magnitude and the cumulative nature of the serious injury sustained by domestic BWPF producers.

VII. Remedy Measures Must Be Imposed on Imports of BWPF from Mexico and Canada

The Commission correctly determined that imports of fittings from Mexico and Canada contributed to the serious injury suffered by domestic producers. In addition, consistent with their votes in the injury phase of the proceeding, four Commissioners recommended that remedies be applied equally to imports of fittings from Mexico, and four Commissioners recommended that remedies be applied equally to imports of fittings from Canada. Consistent with these views, we urge the TPSC to stipulate in its recommendations to the President that any remedy measures imposed with respect to imported BWPF must apply equally to imports from Canada and Mexico.

As demonstrated by the import statistics provided at Exhibit 1, Mexico was the second largest supplier of small diameter BWPF in 1999 and 2000, and supplied the largest volume of any country in the January-June 2001 interim period.<sup>38</sup> Based on these large volumes, we recommended a country-specific cap for Mexico's imports of small-diameter BWPF based on its historical share of total imports of this product.<sup>39</sup> Canada's

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<sup>38</sup> Exhibit 1.

<sup>39</sup> See Exhibit 2.

volumes were significant as well, representing the eighth highest volume of small-diameter BWPF and the sixth highest volume of large-diameter BWPF imports in 2000.<sup>40</sup>

Evidence of the “collapse” in prices for Mexican BWPF during 2000 and interim 2001 and of the severe underselling by Mexican imports of a representative BWPF product was discussed *supra*.<sup>41</sup> Moreover, as Jay Zidell, President of TFA, testified at the Commission’s November 8, 2001 remedy phase hearing, domestic BWPF competes with imports from both Mexico and Canada in all market segments, and these imports consistently undercut U.S. producers’ prices by wide margins. As demonstrated by the import statistics through September 2001, the damaging effect on domestic producers was exacerbated through this year by compounding increases in small-diameter BWPF from both Mexico and Canada.<sup>42</sup> Specifically, imports from Mexico were 105 percent higher in the first nine months of 2001 than in the same period of 2000. Imports from Canada increased by 49 percent over the same period. The TPSC must ensure that the relief measures it recommends to the President are applied equally to BWPF imports from Mexico and Canada, and thereby address the high and increasing volumes of low-priced BWPF from these countries that consistently confront and undersell domestic BWPF. A remedy that excludes NAFTA imports would address only a portion of the serious injury suffered by domestic producers, and would hinder the industry’s ability to adjust to competition from non-NAFTA countries.

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<sup>40</sup> Exhibit 1.

<sup>41</sup> See Steel Determination at 180.

<sup>42</sup> See Exhibit 5.

VIII. The Remedy Measures Must Apply to Both Finished and Unfinished Fittings

To ensure that effective relief results from any measures it recommends, the TPSC must reject the request by Weldbend Corporation (“Weldbend”), a domestic fittings producer, to exclude unfinished BWPF (what Weldbend refers to as “fitting forgings”) from any remedy imposed by the President.<sup>43</sup> Weldbend asserts that unfinished BWPF are not commercially available from domestic producers, and therefore imports of these products should be excluded. As we demonstrated in our November 27, 2001 and December 5, 2001 comments to the TPSC, unfinished fittings are available from domestic producers, excluding unfinished BWPF would be administratively untenable, and excluding this product would undermine any relief imposed by the President to address the serious injury suffered by domestic BWPF producers.

IX. The Commission’s Remedy Recommendations Would Provide Inadequate Relief for Domestic BWPF Producers

A. Summary of Commission Remedy Recommendations

On December 7, 2001, the Commission announced remedy recommendations with respect to the product groupings for which it had made affirmative findings of serious injury, and on December 19, 2001, transmitted its injury determinations and views on remedy to the President. As stated above, BWPF is included within the Commission’s Product Group 22, carbon steel flanges, fittings, and tool joints. The Commission’s remedy recommendations can be broken down into two distinct groups. Commissioners Bragg and Devaney recommended an additional tariff of 30 percent, to

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<sup>43</sup> See Request of Weldbend Corporation to Exclude From Import Relief Carbon Steel Butt-Weld Pipe Fitting Forgings (Included in HTSUS 7307.93.3000, 7307.93.9030) (November 13, 2001). We note that the Commission did not grant Weldbend’s requests to exclude unfinished fittings from its injury determination and remedy recommendations.

be phased down by 2 percentage points in years two and three, and by 5 percentage points in year four. To provide adequate relief to domestic producers, the TPSC must recommend a tariff increase that is at least as high as that recommended by Commissioners Bragg and Devaney. Even a 30 percent additional tariff would not fully address the margins of underselling observed by the Commission. As discussed above, the Commission's pricing data indicated steady prices for U.S. BWPF, declining prices through the period of investigation for imported BWPF from all countries, and margins of underselling up to 36.5 percent for Mexican BWPF and up to 25.8 percent from non-NAFTA BWPF.<sup>44</sup>

However, Chairman Koplan, Vice-Chairman Okun and Commissioners Miller, and Hillman recommended an additional tariff of 13 percent with respect to the "flanges, fittings, and tool joints" product grouping, to be phased down by 3 percentage points in each subsequent year in which the remedy is in effect (4 years recommended by Koplan, Miller, and Hillman, and 3 years recommended by Okun). Based on the evidence collected by the Commission in this investigation, a remedy limited to a 13 percent duty increase would not provide effective relief for domestic BWPF producers.

The remedy imposed by the President must provide an opportunity for domestic producers to adjust to import competition.<sup>45</sup> The domestic BWPF producers submitted to the TPSC on November 5, 2001 a detailed plan of the adjustment actions they committed to undertake, provided that effective measures were imposed.<sup>46</sup> These adjustments

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<sup>44</sup> Final Staff Report at TUBULAR-75 and TUBULAR-86, Table TUBULAR-67.

<sup>45</sup> 19 U.S.C. §2253(a)(1)(A).

<sup>46</sup> Proposals Regarding Actions To Facilitate Positive Adjustment To Import Competition Filed On Behalf Of Mills Iron Works, Inc., Trinity Fitting Group, Inc., And Tube Forgings Of America, Inc., Steel Product 6: Carbon And Alloy Steel Flanges, Fittings, And Tool Joints (November 5, 2001).

include capital investment in production equipment and training, consolidation of facilities, expanding product lines, and exploration of new business relationships that will facilitate domestic fittings' speed to market. However, Mills, Trinity, and TFA explained that their ability to undertake the specified adjustments was wholly dependent on the President's implementing meaningful relief measures with respect to imports of BWPF.

These producers explained that

the relentless import competition faced by U.S. producers of BWPF caused these producers and their lenders to lose confidence in the ability to achieve a favorable return on capital investments that, paradoxically, would enhance their ability to compete with these imports. Measures that provide domestic producers a substantial respite, for a reasonable period of time, from the increasing volumes of low-priced imported BWPF, will create an opportunity for domestic producers to regain the lost market share and profitability that will fuel capital investment and other positive adjustment actions.<sup>47</sup>

We submit that a remedy consisting of a 13 percent additional duty on imported BWPF, to be pared down over four years to 4 percent, would not provide the "substantial respite" these producers require. Domestic producers will be hard pressed to convince lenders to finance their planned investments in plant and equipment in light of such limited relief. As highlighted by the data collected by the Commission with respect to the fittings product group, as low-priced imports wrested increasing market share from domestic producers, profits plummeted into losses, and capital investment fell by 41 percent between 1996 and 2000.<sup>48</sup> Given this industry's historical performance, a remedy of this magnitude would do little to reassure lenders as to its future prospects.

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<sup>47</sup> *Id.* at 7.

<sup>48</sup> *Id.*



B. Without Stringent Relief Measures, Domestic BWPF Producers Will Continue to Suffer Serious Injury Due to Imports

In reaching its determination of serious injury for the fittings product group, the Commission considered the high margins of underselling for imported BWPF (in the 20-30 percent range) as a key element of causation.<sup>49</sup> However, it appears that these substantial margins of underselling did not weigh as heavily in the Commission's determinations regarding remedy, particularly with respect to the tariff increase beginning at 13 percent recommended by certain Commissioners.<sup>50</sup>

This is particularly evident in these latter Commissioners' estimation that a 13 percent tariff increase would address underselling to such a degree that the import market share would shrink to 1996-1999 levels.<sup>51</sup> Current underselling by imported BWPF has been documented at margins of in excess of 35 percent. In light of margins of this magnitude, it is unclear to Mills, Trinity, and TFA how they will increase their sales of BWPF and regain market share when, after imposition of the proposed 13 percent duty, the imported BWPF will still undersell the domestic BWPF by a margin of more than 20 percent. Thus, even in the first year of implementation, when this proposed remedy imposes the highest duty on imports, it is likely that domestic BWPF will continue to lose market share to imports. Moreover, the sharp reductions in duty proposed for the second, third and fourth years ensure that if the initial duty increase reduces import volumes to any discernable degree, imports of BWPF will quickly return to and surpass their current volumes.

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<sup>49</sup> See Steel Determination at 176 and 180.

<sup>50</sup> See Steel Determination at 389-392 and 491-494.

<sup>51</sup> *Id.* at 391-392 and 491-494.

In summary, a remedy consisting of a 13 percent duty increase phased out over three or four years would not facilitate the efforts of BWPF producers to make a positive adjustment to import competition. On the contrary, this “remedy” paves the way for imports of BWPF to continue their pattern of volume and market share increases and price suppression.

The inadequacy of the Commission’s remedy recommendations as a means to facilitate adjustment by domestic producers of BWPF may stem from the fact that those remedy recommendations were targeted to much broader aggregations of steel products, *i.e.*, either the flanges, fittings, and tool joints product group, or the entire carbon steel tubular products category. We ask that the TPSC take a different approach, and recommend that the President address the domestic BWPF industry by effectively restricting imports of BWPF. To do so adequately and within the statutory guidelines, it is essential that the TPSC inform its remedy recommendations with the underselling data collected by the Commission and the data presented in these comments that relate specifically to imports of BWPF. These data formed the basis of Mills, Trinity, and TFA’s proposed remedy measures. We urge the TPSC to recommend that the President impose these measures on imports of BWPF, which will permit this industry to make meaningful adjustments to import competition.

In considering the remedy recommendations set out in these comments, we also ask that the TPSC weigh not only the hard data on import volumes, prices, profit margins, and so on, but also the experiences of the domestic BWPF producers as expressed during the Commission’s hearings. In particular, Don Graham, President of Trinity, the largest of the domestic integrated producers of BWPF, testified at the Commission’s October 1,

2001 hearing on injury that Trinity has struggled to remain competitive in a market that is increasingly dominated by low-priced imports. Relentless competition from cheaply priced imports of BWPF and carbon steel flanges forced Trinity to close a forge shop in Russellville, Arkansas in 1998; a flange plant in Ackerman, Mississippi in 2000; and its remaining flange facility in Houston, Texas in 2001.<sup>52</sup> Since mid-1998, the flood of cheaply-priced imports also forced Trinity to slash production and reduce employment at three facilities that produce fittings. Since 1998, Trinity has closed production facilities, cut back production of fittings, and exited the flange business altogether because it was unable to compete with low-priced imports.<sup>53</sup>

The fact that a producer of Trinity's stature in the industry was forced to abandon an entire segment of its production – carbon steel flanges – because of its inability to compete in a U.S. market overcome by successive waves of low-priced imports, presages the likely fate of Trinity and other U.S. producers if imports of BWPF are allowed to continue without a temporary, but substantial, check on their volume and price. Imposition of a remedy such as the 13 percent additional duty recommended by certain Commissioners would not allow domestic producers to bounce back from years of erosion to their market share and profitability, because it would serve as little more than a nuisance to foreign producers. The impotence of such a limited remedy is underscored by the testimony before the Commission of another domestic BWPF producer, TFA.

Jay N. Zidell, President of TFA, testified at the Commission's October 1, 2001 injury hearing that because BWPF is a commodity product, competition is based

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<sup>52</sup> See, e.g., Steel Determination at 172 and 488.

<sup>53</sup> *Id.*

principally on price. According to Mr. Zidell, imported BWPF produced by foreign manufacturers listed on the “approved supplier” lists maintained by some U.S. end-users generally undersell U.S. producers’ prices by 15-20 percent, while imports from the many manufacturers that are not “approved” consistently undersell U.S. BWPF by even greater margins.<sup>54</sup> As described *supra*, TFA’s experience is consistent with the pricing data on BWPF collected by the Commission, which demonstrated margins of underselling by imported BWPF of 25.8 and 36.5 percent.

Moreover, the import statistics provided at Exhibit 1 of these comments indicate that in the months following the Commission’s investigation period, imports of BWPF continued to surge above the previous year’s volume. Specifically, imports of BWPF were 41 percent higher in the period January-September 2001 (22,665 tons) than they were in the first nine months of 2000 (14,897 tons). The continued volume increases, combined with the downward pricing trends observed by the Commission (imported BWPF from all countries declining, domestic prices steady, margins of underselling reaching 36.5 percent and 25.8 percent Mexican and non-NAFTA BWPF, respectively) indicate that the market conditions that led to the Commission’s unanimous finding of serious injury have not abated.

We urge the TPSC to recommend relief that is strong enough to interrupt the current conditions temporarily, and thereby allow domestic BWPF producers to make the

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<sup>54</sup> Consistent with Mr. Zidell’s testimony, the Commission dismissed foreign fittings producers’ claim that segments of the fittings market are wholly or partially closed to imports due to “approved supplier” lists, stating that “approved manufacturer lists do not appear to have been an insurmountable hurdle to imports entering the U.S. market, as they increased by over 30 percent from 1996 to 2000, and by another 32 percent between interim 2000 and 2001.” Steel Determination at 177.

adjustments necessary to compete with imports. At this point, they simply cannot compete.

X. Conclusion

Based on the information and argument presented in these comments, we urge the TPSC to recommend that the President implement the program of adjustment measures we have proposed. As we discussed, these measures would impose restrictions on imports of BWPF that are necessary to facilitate the domestic industry's positive adjustment to import competition.

Respectfully submitted,

/s/

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